

D R A F T

FOR DISCUSSION ONLY

UNIFORM CHILD ABDUCTION PREVENTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

For April 2006 Drafting Committee Meeting

WITH PREFATORY NOTE AND COMMENTS

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By

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April 20, 2006

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UNIFORM CHILD ABDUCTION PREVENTION ACT

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UNIFORM CHILD ABDUCTION PREVENTION ACT

Prefatory Note

In August, 2003, the National Conference of Commissioners on Uniform State Laws (NCCUSL) appointed a study committee to explore the feasibility of a uniform law to prevent child abduction in international custody disputes. The Joint Editorial Board for Uniform Family Law Acts in October, 2003, urged the NCCUSL Committee on Scope and Program to recommend the creation of a drafting committee. NCCUSL appointed a Drafting Committee on the Standards for the Prevention of International Child Abduction.¹ The Scope Committee, at the request of the drafting committee asked, expansion to include domestic as well as international abductions.²

Child abduction is a serious problem. The Office of Juvenile Justice and Delinquency Prevention estimated that 262,100 children were abducted in 1999; 203,900 of them (or 78 per cent) were abducted by a family member; approximately 1000 of the abductions were international.³ If an abduction occurs after a child-custody determination, all states have enforcement proceedings, with forty-five jurisdictions using the Uniform Child Custody Jurisdiction and Enforcement Act Section 3 procedures. If the abduction is international, the Hague Convention on the Civil Aspects of International Child Abduction, in effect in over seventy countries, facilitates the return of an abducted child to the child's habitual residence.⁴ There are also federal laws to help locate missing children.⁵

¹Lyle Hillyard, Utah, Chair; and Linda Elrod was Reporter. In addition to the drafting committee and official advisors, observers are Jeff Atkinson, ABA Family Law Section; Richard Barry, American Academy of Matrimonial Lawyers; Patricia Hoff, Legal Consultant; Teresa Lauderdale, parent; Texas; Jenni Thompson, consultant, formerly with the Polly Klaas Foundation; Merle Weiner, Family Law Professor University of Oregon; and Lawrence R. Whyte, parent, Houston, Texas.

² The drafting committee met on April 9-11, 2004; September 10-12, 2004; April 8-10, 2005; July 26-27 for first reading at the annual meeting in Pittsburgh; November 11-12, 2005; March 17-19, and April 28-29, 2006.

³See Second National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMART-2) (Oct. 2002).

⁴See The Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. 10494 et seq. (1986), and the International Child Abduction Remedies Act (ICARA), 42 U.S.C. §§ 11601-11610.

⁵Missing Children Act, 28 U.S.C. § 534 (1982); Missing Children Search Assistance Act; and the National Child Search Assistance Act, 42 U.S.C. §§ 5779 & 5780 (1990).

Many abductions, however, occur before the court has entered a child-custody determination. Families going through disputes over parenting time are the highest risk group for potential abductions.⁶ Many existing child-custody determinations do not contain sufficient provisions to prevent an abduction because the orders are too vague or contain no restrictions on parenting time.

The purpose of this Act is to deter domestic and international child abductions by parents or any persons acting on behalf of the parent through identification of risk factors and imposition of preventive measures. If judges have sufficient information about abduction risk factors, they can place appropriate restrictions to prevent abductions. Dealing appropriately with the risk factors at the time of an initial child-custody determination will help protect children from the threat of abduction. Only three states have enacted specific child abduction prevention statutes.⁷ A couple of other states list abduction risk factors.⁸

This Act will fill a void in the majority of states by identifying circumstances indicating a risk of abduction and providing measures to prevent the abduction of children, pre or post decree by parents or those acting on the parent's behalf. The UCAPA is premised on the general principle that preventing abduction is usually in a child's best interests.

⁶AMERICA'S HIDDEN CRIME: WHEN THE KIDNAPPER IS KIN 10-11 (Polly Klaas Foundation 2004).

⁷See ARK. STAT. ANN. § 9-13-401-407 (2005); TEX. FAM. CODE §153.501- §153.503; CAL. FAM. CODE § 3408.

⁸ See FLA. STAT. § 61.45; OR. REV. STAT. § 109.035.

1 **UNIFORM CHILD ABDUCTION PREVENTION ACT**

2
3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Child Abduction
4 Prevention Act.

5 **Comment**

6
7 This Act is civil law and complements existing state laws. For example, the Uniform
8 Child Custody Jurisdiction and Enforcement Act (UCCJEA), 9 U.L.A. Part I 657 (1999), enacted
9 in forty-five states, and the Uniform Child Custody Jurisdiction Act, 9 U.L.A. Part I 115 (1988)
10 specify the jurisdictional requirements for making and enforcing a child-custody determination.
11 The Parental Kidnapping Prevention Act of 1980 (“PKPA”), 28 U.S.C. § 1738A, requires that
12 states give full faith and credit to sister state decrees made in accordance with the principles of
13 the PKPA, which are the same as the UCCJEA.
14

15 Federal and state laws make parental kidnapping a crime.⁹ While every state criminally
16 forbids custodial interference by parents or relatives of the child, the laws differ as to the
17 elements of the offenses, the punishments given, and whether a child-custody determination must
18 exist. If an abduction occurs, a court may find an abductor in contempt if there is violation of a
19 court order or injured parties may sue in tort for custodial interference. Most of these remedies
20 are available after an initial child-custody determination.
21

22 **SECTION 2. DEFINITIONS.** In this [act]:

23 (1) “Abduction” means taking, keeping, or concealing a child with the intent to obstruct
24 the lawful exercise of parental rights.

25 (2) “Child” means an unemancipated individual who is less than 18 years of age.

26 (3) “Child-custody determination” means a judgment, decree, or other order of a court
27 providing for the legal custody, physical custody, parenting time, or visitation with respect to a

⁹ See International Parental Kidnapping Crime Act (IPKCA), 18 U.S.C. § 1204; The Fugitive Felon Act, 18 U.S.C. § 1073; The Extradition Treaties Interpretation Act of 1998, 18 U.S.C. § 3181; and the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. 108-21, 117 Stat. 650 (AMBER Alert Program).

1 child. The term includes a permanent, temporary, initial, and modification order.

2 (4) “Child-custody proceeding” means a proceeding in which legal custody, physical
3 custody, parenting time, or visitation with respect to a child is at issue. The term includes a
4 proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity,
5 termination of parental rights, and protection from domestic violence, in which the issue may
6 appear.

7 (5) “Court” means an entity authorized under the law of a state to establish, enforce, or
8 modify a child-custody determination.

9 (6) “Jurisdiction,” depending on the context, means:

10 (A) a [county], state, [tribe,] or country; or

11 (B) the authority of a court to make a child-custody determination.

12 (7) “Motion” includes a petition or its equivalent.

13 (8) “Parental rights” means the right to physical custody of a child

14 (A) whether joint or sole(and includes parenting time); and

15 (B) whether arising by operation of law, court order, or legally binding agreement
16 of the parties.

17 (9) “Parenting time” means the residential and nonresidential time allocated by court
18 order to each parent.

19 (10) “Person” means an individual or entity authorized by state law to seek a child-
20 custody determination.

21 (11) “Record” means information that is inscribed on a tangible medium or that is stored
22 in an electronic or other medium and is retrievable in perceivable form.

1 (12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
2 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
3 the United States.

4 (13) “Travel documents” mean records relating to a travel itinerary, including
5 reservations for transportation and accommodations. The term does not include a passport or
6 international visa.

7 [(14) “Tribe” means an Indian nation, tribe, or band, or Alaskan Native village,
8 recognized by federal law or formally acknowledged by a state.]

9 **Comment**

10 The definition of abduction follows the International Parental Kidnapping Prevention
11 Act.
12

13 The definition of a child as a person under age 18 is the same as in the Uniform Child
14 Custody Jurisdiction and Enforcement Act (UCCJEA) Section 102(2) and the Parental
15 Kidnapping Prevention Act (PKPA). State law determines when a child becomes emancipated
16 before age 18. This Act is limited to the abduction of minors even though the risk of abduction
17 may apply to a disabled adult who has an appointed adult guardian.
18

19 The definition of “child-custody determination” includes the definition in UCCJEA
20 Section 102(3) but adds the term “parenting time.” Local terminology may differ.
21

22 The definition of “child-custody proceeding” is identical to UCCJEA Section 102(4).
23

24 The term “parental rights” is used in place of “custody.” A biological or legal parent has a
25 natural right to exercise parental rights. If the family is intact, both parents exercise parental
26 rights, usually in one location. If the parents have never married and do not live together or the
27 parties separate or divorce, the court in a paternity action or other legal proceeding may allocate
28 parental rights, giving each parent detailed parenting time, often incorporating an agreement of
29 the parents. If a child is removed from the care of the parents, a state entity, such as a social
30 welfare agency, may have the right to determine the child’s residency.
31
32

33 **SECTION 3. JURISDICTION.** A request for relief under this [act] shall be brought in

1 a court that has jurisdiction to make a child-custody determination with respect to the child at
2 issue under [insert citation to state’s law - Uniform Child Custody Jurisdiction and Enforcement
3 Act/Uniform Child Custody Jurisdiction Act]. A court has temporary emergency jurisdiction
4 under section ___ of the UCCJEA if the child is present in this state and it is necessary in an
5 emergency to protect the child because there is a risk of imminent abduction of the child.

6 **Comment**

7 This Act complements, but does not limit, contradict, or supercede the Uniform Child
8 Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA, however, does not cover
9 intrastate and predecree situations. A court needs subject matter jurisdiction over the child,
10 usually the home state under the UCCJEA for the initial child-custody determination. A court
11 may need personal jurisdiction in order to subject a respondent to some of the remedies in this
12 Act which go beyond a child custody determination. If a state would be able to exercise
13 emergency jurisdiction under the UCCJEA, it can exercise jurisdiction under this Act even if
14 another court has issued a child custody determination and has continuing exclusive jurisdiction
15 under UCCJEA 204.

16
17 Under UCCJEA § 208, if a court has jurisdiction because a person seeking to invoke its
18 jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its
19 jurisdiction. However, as the comment to Section 208 explains, domestic violence victims should
20 not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing
21 domestic violence. Under UCCJEA § 207(b)(1), domestic violence shall be considered in a
22 court’s inconvenient forum analysis.
23

24 **SECTION 4. MOTION FOR MEASURES TO PREVENT ABDUCTION.**

25 (a) The court may impose abduction prevention measures sua sponte, or a person may file
26 a motion seeking abduction prevention measures. The motion must be verified and include a
27 copy of any existing child-custody determination, if available. [Subject to local law providing for
28 the confidentiality of procedures, addresses, and other identifying information], the motion must
29 specify the risk factors for abduction including those described in section 6 or any other factors,
30 and, if reasonably ascertainable:

- 1 (1) the name, birthdate, and gender of the child at risk for abduction;
- 2 (2) the present address or physical location of the child, if known;
- 3 (3) whether a prior motion to prevent abduction or domestic violence has been
- 4 filed by either parent, the date of such motion, and its disposition;
- 5 (4) whether either party has been arrested or convicted of a crime related to
- 6 domestic violence or child abuse; and
- 7 (5) any other information required to be submitted to the court for a child-custody
- 8 determination [under UCCJEA Section 209 or applicable state law].

9 (b) If a person alleges in an affidavit or a pleading under oath that the health, safety, or
10 liberty of a party or child would be jeopardized by disclosure of identifying information, the
11 information must be sealed and may not be disclosed to the other party or the public unless the
12 court orders the disclosure to be made after a hearing in which the court takes into consideration
13 the health, safety, or liberty of the party or child and determines that the disclosure is in the
14 interest of justice.

15 **Comment**

16 The contents of the motion follow those for pleadings under the UCCJEA § 209. The
17 information is made subject to local law on the protection of names or identifying information in
18 certain cases. A number of states have enacted laws relating to the protection of victims in
19 domestic violence and child abuse cases which provide for the confidentiality of victims' names,
20 addresses, and other information. These procedures must be followed if the state law requires
21 their applicability. If a state does not have local law that provides for protecting names and
22 addresses, then subsection (c) or a similar provision should be adopted. Section (c) is modeled
23 after UCCJEA § 209(e).

24
25 Usually the motion will be filed by a parent who fears that the other parent or family
26 members are preparing to abduct the child. A state child welfare agency may have lawful
27 custody and could be the party alleging the risk of abduction.
28

1 **SECTION 5. EX PARTE RELIEF.**

2 (a) If a person alleges that the risk of abduction is imminent, the court, after considering
3 the risk factors in section 7 and searching the databases listed in subsection (b), may issue an
4 immediate ex parte order granting temporary relief sufficient to prevent the abduction of the
5 child, if appropriate under section 8. A court shall not enter an ex parte order granting relief if
6 the movant has been subject to or is currently subject to a restraining order for domestic or family
7 violence or if the movant has been arrested or convicted of domestic or family violence, or child
8 abuse.

9 (b) Prior to entry of any order under this section or section 8, the court shall conduct a
10 search of the National Crime Information enter Protection Order File (NCICPOF), the Wanted
11 Person File, the Interstate Identification Index, and comparable state databases, to see if the
12 names of the movant or respondent are listed for a reason related to a crime of domestic or family
13 violence. The court shall also review the movant’s motion and ask specifically whether there
14 have been any arrests, proceedings, or protection order applications related to a crime of
15 domestic or family violence or child abuse, and their disposition.

16 (c) If the court issues an ex parte order, the order shall direct the respondent to appear in
17 person with or without the child at the hearing and may make any other orders necessary to
18 ensure the safety of the parties and the child. The order shall be served in the manner the court
19 determines to be appropriate under the circumstances of the case and may include service by the
20 sheriff. The person requesting the order shall pay the costs of service. The court shall hold a
21 hearing as soon as reasonably possible and shall expedite the hearing if it finds an emergency
22 exists.

1 (d) The order issued under subsection (c) of this section must state the time and place of
2 the hearing and advise the respondent that at the hearing, the court may order that the temporary
3 order be made permanent.

4 (e) If the court finds, after hearing, that a person sought an ex parte order with no factual
5 basis or for the purpose of harassment or in bad faith, the court may award respondent reasonable
6 attorney fees.

7 (f) The ex parte order may be enforced under [the UCCJEA or applicable law].

8 **Comment**

9 This section mirrors the UCCJEA section on expedited enforcement. Section 5 allows
10 the court to issue ex parte relief immediately to prevent an abduction predecree or post decree. If
11 there is an existing child-custody determination, it can be enforced under UCCJEA 311 or
12 existing state law. Abductions that occur before a child-custody determination has been entered
13 are not covered by the UCCJEA.

14
15 Judges need to be sensitive to issues of domestic violence so that an abuser cannot use
16 this act to gain temporary custody. A person who has committed domestic violence or child
17 abuse against the movant or child would potentially pose a risk of harm to the child and should
18 not be awarded custody or additional parenting time with the child in an uncontested hearing.
19 Such a person, however, is not prohibited from bringing an action for relief in a contested
20 hearing where the issues can be fully examined by the court. In order to screen for domestic
21 violence or child abuse, the court must ask movants to disclose all relevant information in their
22 motions as well as at any hearings. In addition, the court must check relevant state and national
23 databases to see if relevant information exists that has not been disclosed.

24
25 State law or local order may determine if an action has to be filed of record before a
26 motion for ex parte relief is filed, the duration of the ex parte order, and the time for a full
27 hearing on the merits.
28

29 **SECTION 6. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.**

30 (a) Upon the filing of a motion seeking abduction prevention measures, the movant may
31 file a verified application for the issuance of a warrant to take physical custody of the child if the

1 child is in imminent danger of abduction.

2 (b) If the court, upon the testimony of the person filing the option or other witness, is
3 satisfied that there is probable cause to believe that the child is imminently likely to be abducted
4 and the issuance of a warrant is necessary to prevent the abduction, it may issue a warrant to take
5 physical custody of the child. The motion must be heard on the next judicial day after the
6 warrant is executed unless that date is impossible. In that event, the court shall hold the hearing
7 on the first judicial day possible.

8 (c) A warrant to take physical custody of a child must:

9 (1) recite the facts upon which a determination of imminent risk of abduction of a
10 child is based;

11 (2) direct law enforcement officers to take physical custody of the child
12 immediately; and

13 (3) provide for the placement of the child pending further order of the court.

14 (d) The respondent must be served with the motion, warrant, and order immediately after
15 the child is taken into physical custody.

16 (e) A warrant to take physical custody of a child is enforceable throughout this state. If
17 the court finds on the basis of the sworn testimony of the movant or other witness that a less
18 intrusive remedy will not be effective, it may authorize law enforcement officers to enter private
19 property to take physical custody of the child. If required by exigent circumstances of the case,
20 the court may authorize law enforcement officers to make a forcible entry at any hour.

21 (f) The court may impose conditions upon placement of a child to ensure the appearance
22 of the child and the child's custodian.

1 **Comment**

2 The warrant tracks UCCJEA § 311 which allows for a petitioner to file a verified
3 application for the issuance of a warrant to take physical custody of the child if the child is
4 immediately likely to be removed from this State. The judge has discretion and can weigh
5 whether an emergency actually exists, whether the petitioner sought relief because of fear the
6 respondent would run if notice were given, whether a prompt hearing with notice would meet the
7 needs of the case, and the type of relief that needs to be given on an emergency basis.
8
9

10 **SECTION 7. RISK FACTORS OF ABDUCTION.**

11 (a) To determine whether there is credible risk of the abduction of the child, the court
12 shall consider evidence that the respondent:

13 (1) has previously abducted or attempted to abduct the child;

14 (2) has threatened to abduct the child;

15 (3) has recently engaged in a pattern of abduction planning activities, including:

16 (A) abandoning employment;

17 (B) selling a primary residence, terminating a lease, or conducting any
18 other such activities;

19 (C) closing financial management accounts, liquidating assets, hiding or
20 destroying financial documents, and conducting any other extraordinary financial activities;

21 (D) applying for a passport, visa, or other travel documents, purchasing of
22 travel tickets for the respondent, another family member, or the child; or

23 (E) seeking to obtain the child's birth certificate or school or medical
24 records;

25 (4) has engaged in domestic violence, stalking, or child abuse or neglect;

26 (5) has failed or unjustifiably refused to cooperate with the other parent or follow

1 orders of the court concerning a child custody determination for the child;

2 (6) lacks strong familial, financial, emotional or cultural ties to the jurisdiction or
3 the United States, whether or not respondent is resident of the jurisdiction or a citizen or
4 permanent resident of the United States;

5 (7) has strong familial, financial, emotional, or cultural ties to another jurisdiction
6 or country;

7 (8) is likely to take the child to a country that:

8 (A) is not a party to or compliant with the Hague Convention on the Civil
9 Aspects of International Child Abduction according to the most recent report on compliance
10 issued by the United States Department of State;

11 (B) presents legal or other difficulties to returning the child to this
12 country;

13 (C) does not have legal mechanisms for immediately and effectively
14 enforcing a child-custody determination or a return order under the Hague Convention on the
15 Civil Aspects of International Child Abduction;

16 (D) does not provide for the extradition of a parent who abducts the child
17 and for the return of the child to this country;

18 (E) poses a risk that the child's physical or emotional health or safety
19 would be endangered in the country because of specific circumstances relating to the child or
20 because of human rights violations committed against children;

21 (F) has local laws or practices that would:

22 (i) enable the respondent, without due cause, to prevent the

1 movant from contacting the child;

2 (ii) restrict the movant from freely traveling to or exiting from the
3 country because of the movant's gender, nationality, marital status, or religion; or

4 (iii) restrict the child's ability legally to leave the country after the
5 child reaches the age of majority because of a child's gender, nationality, or religion;

6 (G) is included by the United States Department of State on a current list
7 of state sponsors of terrorism;

8 (H) is a country for which the United States Department of State has
9 issued a current warning to United States citizens regarding travel to the country;

10 (I) does not have an embassy of the United States in the country; or

11 (J) is engaged in active military action or war, including a civil war;

12 (9) is undergoing a change in immigration or citizenship status that would
13 adversely affect the respondent's ability to remain in the United States legally;

14 (10) has had an application for United States citizenship denied;

15 (11) has forged or presented misleading or false evidence on government forms to
16 obtain or attempt to obtain a passport, visa, travel documents, social security card, driver's
17 license, or other government-issued identification card or has made a misrepresentation to the
18 United States government.

19 (12) has used multiple names to attempt to mislead or defraud; or

20 (13) engaged in any other conduct the court considers relevant to the risk of
21 abduction.

22 (b) The court shall consider credible evidence that the respondent believed in good faith

1 that the conduct was necessary to avoid imminent harm to the child or parent.

2 **Comment**

3 (a) The risk factors are based on research that has been done during the last twelve years.
4 ABA, EARLY IDENTIFICATION OF RISK FACTORS FOR PARENTAL ABDUCTION (NCJ185026). The
5 more of these factors that are present, the more likely the chance of an abduction. However, the
6 mere presence of one or more of these factors does not mean that an abduction will occur just as
7 the absence of these factors does not guarantee that no abduction will occur. Some factors can be
8 done in conjunction with a relocation petition, which would negate an inference that the parent is
9 planning to abduct the child. Researchers have identified three important characteristics of
10 abducting parents or family members: they (1) dismiss the value of the other parent in the child's
11 lives; (2) have young children or children vulnerable to influence; and (3) often have the support
12 of their family and others. See Janet Johnston & Linda Girdner, *Family Abductors: Descriptive*
13 *Profiles and Preventative Interventions* (U.S. Dep't of Justice, OJJDP 2001).
14

15 (8) There are difficulties associated with securing return of children from countries that
16 have not ratified or acceded to the Hague Convention on the Civil Aspects of Child Abduction or
17 are not compliant with the Hague. There are potentially grave risks to children if the children
18 may be removed to countries that are guilty of human rights violations, including arranged
19 marriages, child labor, lack of child abuse laws, female genital mutilation, sexual exploitation,
20 any form of child slavery, torture and the deprivation of liberty. Judges should be particularly
21 sensitive to the importance of preventative means where there is an identified risk of a child
22 being removed to such countries. Compliance Reports are available at
23 http://www.travel.state.gov/family/abductin/hague_issues
24

25 (8)(G) Travel warnings alone do not necessarily indicate that there will be difficult
26 recovering a child.
27

28 (b) Some of the risk factors involve the same activities that might be undertaken by a
29 victim of domestic violence. Therefore, the court should look at evidence that the parent
30 preparing to leave is fleeing domestic violence. In such a situation, the court must consider that
31 any order restricting departure or transferring custody may pose safety issues for the respondent
32 and the child, and therefore, should be imposed only when the risk of abduction, the likely harm
33 from the abduction, and the changes of recovery outweigh the risk of harm to the respondent and
34 the child.
35

36 **SECTION 8. MEASURES TO PREVENT ABDUCTIONS.**

37 (a) If the court finds a credible risk of abduction by a preponderance of the evidence, the
38 court shall enter an appropriate order. In determining the relief to be granted, the court shall

1 consider the age of the child, the potential physical and psychological harm to the child from an
2 abduction, the legal and practical difficulties of returning the child to the jurisdiction, and
3 evidence of domestic violence. The court may include, but is not limited to, the following
4 prevention measures:

5 (1) entering an appropriate child custody determination [under applicable state
6 law] which shall state:

7 (A) the basis for the court's exercise of jurisdiction;

8 (B) the manner in which notice and opportunity to be heard were given to
9 the persons entitled to notice of the proceeding;

10 (C) a detailed description of each parent's parenting time; [and]

11 (D) a provision stating that a violation of the order may subject the party in
12 violation to civil and criminal penalties, [and]

13 [(E) identification of the child's domicile and habitual residence at the
14 time of the issuance of the order.]

15 (2) issuing a warrant to take physical custody of a child;

16 (3) requiring supervised parenting time by the respondent until the court finds that
17 supervision is no longer necessary and ordering respondent to pay for the supervision;

18 (4) prohibiting the respondent from directly or indirectly:

19 (A) removing or retaining the child in violation of the child-custody
20 determination;

21 (B) removing the child from the school, child-care facility, or similar
22 facility in which the child is enrolled; or

1 (C) approaching the child at any location other than a site designated for
2 supervised parenting time;

3 (5) requiring the respondent to post a bond or to provide other security in an
4 amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be
5 used to pay for the expenses of recovery of the child, including attorneys fees and costs if there is
6 an abduction with any excess being forfeited in whole or in part to the movant;

7 (6) restricting the right of a party to remove the child from the jurisdiction without
8 permission of the court;

9 (7) requiring that a party traveling with the child provide the other party with the
10 following:

11 (A) the travel itinerary of the child;

12 (B) a list of physical addresses and telephone numbers so the child can be
13 reached at any time; and

14 (C) copies of any travel documents;

15 (8) requiring the respondent to obtain counseling on the potentially harmful
16 effects to the child from abduction;

17 (9) requiring a party to register the child-custody determination in another state as
18 a prerequisite to allowing the child to travel to that state;

19 (10) ordering passport and travel controls, including controls that:

20 (A) prohibit the respondent directly or indirectly from removing the child
21 from this state or the United States;

22 (B) require the respondent to surrender any United States or foreign

1 passport issued in the respondent's name and the child's name, including any passport issued in
2 the name of both the parent and the child to the court or the movant's attorney;

3 (C) prohibit the respondent from applying on behalf of the child for a new
4 or replacement passport or international travel visa;

5 (D) seek to place the respondent's name and the child's name on a list
6 maintained by a government agency to prevent departure if there is one.

7 (11) Requiring the respondent to provide as a prerequisite to exercising parental
8 rights:

9 (A) to the United States Department of State's Office of Children's Issues
10 and the relevant foreign consulate or embassy:

11 (i) a record of any court-ordered passport and travel controls for the
12 child; and

13 (ii) a properly authenticated copy of the court order detailing the
14 restrictions and documentation of the respondent's agreement to the restrictions; and

15 (iii) proof that the movant has contacted the Child Passport
16 Issuance Alert Program with respect to the child.

17 (B) to the court, proof of service of the written notice to the United States
18 Department of State's Office of Children's Issues and to the relevant foreign consulate or
19 embassy of passport restrictions;

20 (C) proof of registration with the U.S. Embassy and foreign Central
21 Authority in the destination country unless one of the parents objects;

22 (12) authorizing the assistance of law enforcement;

1 (13) requiring the respondent to obtain an order from another jurisdiction
2 containing terms identical to the child-custody and visitation order issued in the United States
3 unless movant objects; and

4 (14) ordering such other relief as the judge deems appropriate.

5 (b) If the court orders any of the measures in subsection (a), those measures must be
6 specifically noted on the record of the court proceedings and stated in the order issued by the
7 court.

8 **Comment**

9
10 Judges have a choice of remedies. Ideally the judge would choose the least restrictive
11 measures to maximize opportunities for continued parental contact while minimizing the
12 opportunities for abduction. The most restrictive measures should be used when there have been
13 prior custody violations and overt threats to take the child; when the child faces substantial
14 potential harm from an abducting parent who may have serious mental or personality disorder,
15 history of abuse or violence or no prior relationship with the child; or when the obstacles to
16 recovering the child are formidable due to countries not cooperating and enforcing orders from
17 the United States, not being Hague signatories or non-compliant. Determining the potential harm
18 to the child requires an analysis of the individual child.

19
20 (a)(1) A child-custody determination should be clear, specific and enforceable on its face
21 nationally and internationally. The determination should contain a statement specifying the basis
22 for the court's exercise of jurisdiction. The more apparent on the face of the document that the
23 court issuing the order had proper jurisdiction, the more likely courts in other states and countries
24 are to recognize it as valid. A child custody determination entered under this act should be
25 consistent with state law on initial or modification determinations. This Act is not intended to
26 change the substantive law related to child custody.

27
28 (a)(1)(B) A statement showing that the parties were properly served and given adequate
29 notice makes it apparent on the face of the order that due process was met. *See* UCCJEA § 205.
30 States do not require personal jurisdiction over both parents to make a child-custody order under
31 the UCCJEA.

32
33 (a)(1)(C) Vague orders are difficult to enforce without additional litigation. The dates and
34 times for each parent's parenting time should be specified, including holidays, birthdays,
35 telephone or internet contact. The term "reasonable visitation" can lead to conflicts between the
36 parents and make it difficult for law enforcement officers to know if the order is being violated.

1 Joint custody arrangements create special problems. The court must specify the exact parenting
2 times. If the court finds risk factors for abduction, the court should not award joint custody. The
3 finding of a risk factor is sufficient to overcome a presumption in favor of joint custody.
4

5 (a)(1)(D) Judges need to impress upon both parties the importance of complying with the
6 court order. The order can state in bold language: VIOLATION OF THIS ORDER MAY
7 SUBJECT THE PARTY IN VIOLATION TO CIVIL AND CRIMINAL PENALTIES.
8

9 (a)(1)(E) Because every case may be a potential international abduction case, the order
10 should identify the place of domicile and habitual residence of a child at the time the order was
11 made. Although the Hague Convention on the Civil Aspects of International Child Abduction
12 does not define habitual residence and the determination will be made by the court in the country
13 to which the child has been wrongfully removed or retained, a statement in the order may assist
14 in the determination of the child habitual residence at the time of the order.
15

16 (2)The younger the child the more likely they are to be abducted, the more likely they are
17 to be victimized and therefore, are more likely to be in need of the most restrictive measures,
18 including supervised visitation.
19

20 (4) Bonds can be a useful tool in conjunction with other prevention measures. A high
21 enough bond can be a deterrent and serve as a source of funds to help retrieve the child if an
22 abduction occurs.
23

24 (5) While some states do not like to impose on a parent’s constitutional right to travel, a
25 credible risk of abduction is sufficient to restrict a parent’s mobility with the child. The court
26 may want to require the written permission of other parent or court order before the child is
27 removed from the jurisdiction.
28

29 (7) If domestic violence is present, the court may want to order the abusive person to
30 obtain counseling or attendance at a batterers’ intervention and prevention program (BIPP).
31 Some research suggests that anger management programs do not seem to work as well as
32 batterers’ intervention programs.
33

34 (9) If there is a credible risk of international abduction, passport controls are
35 indispensable. International abductions are among the most complex and frustrating and all
36 reasonable restrictions to prevent such abductions are necessary.
37

38 (11) Many law enforcement officers are unclear about their role in responding to parental
39 kidnapping cases. A provision in the custody order directing law enforcement officer to
40 “accompany and assist” a parent to recover an abducted child may be useful. One study showed
41 that 70 percent of law enforcement agencies reported that they did not have written policies and
42 procedures governing family abduction cases. The UCCJEA Sections 315 and 316 authorize law
43 enforcement to enforce a child-custody determination.

1 (12) It may be possible to obtain a “mirror” or reciprocal order. Before exercising rights,
2 the respondent would need to get a custody order from the country to which the respondent will
3 travel that recognizes both the United States order and the court’s continuing jurisdiction. The
4 foreign court would need to agree to order return of the child if the child was taken in violation of
5 the court order. This potentially expensive and time consuming remedy should only be ordered
6 when likely to be of assistance. These orders may be modified or enforced pursuant to the laws of
7 the other country.

8
9 (a) (13) Relief may vary from state to state. In some states, it may be appropriate to
10 appoint a representative for a child or a parenting coordinator.

11
12
13 **SECTION 9. RECOGNITION AND ENFORCEMENT.** An order issued under this
14 [act] is enforceable under applicable state law as a child-custody determination.

15 **SECTION 10. DURATION OF ABDUCTION PREVENTION ORDER.** Abduction
16 prevention orders shall remain in effect until the child reaches age 18 unless otherwise specified
17 in the order, or subsequently modified or removed. Prevention measures may be deleted by the
18 court upon motion of the original moving party.

19 **SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
20 applying and construing this uniform act, consideration must be given to the need to promote
21 uniformity of the law with respect to its subject matter among states that enact it.

22 **SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
23 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
24 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but
25 does not modify, limit, or supersede Section 101(c) of the act (15 U.S.C. Section 7001(c)) of that
26 act or authorize electronic delivery of any of the notices described in Section 103(b) of that act
27 (15 U.S.C. Section 7003(b)).

28 **SECTION 13. EFFECTIVE DATE.** This [act] takes effect on